

REMARKS

Reconsideration of this application in light of the above amendments is courteously solicited.

Initially the undersigned would like to thank Examiner Zimmerman for the courtesies extended during an oral hearing held with the undersigned on January 23, 2003. During the above noted oral hearing the outstanding official action was discussed in detail and the undersigned was greatly aided in formulating an appropriate response thereto.

Independent claim 11 has been amended so as to delete the term "metallurgically" and substitute therefor the term "integrally" in order to overcome the Examiner's rejection under 35 U.S.C. 112, first paragraph. In this regard the Examiner's attention is drawn to Page 4 of the originally filed specification, particularly lines 5-11, which clearly discloses that "...the invention....serves for the forming of the foamed metal itself but also that the foamed metal which develops bonds in situ and integrally with the solid parts...". In light of the foregoing amendment, it is submitted that the Examiner's rejection of claim 11 is now moot.

Applicant respectfully requests the Examiner reconsider his rejection of claims 11-12 under 35 U.S.C. 112, second paragraph as well as his rejection of the claims over the variety of cited and applied prior art set forth in paragraphs 9, 11, 13, 15 and 17 of his FINAL rejection.

With regard to the Examiner's rejection of claims 1-18 under 35 U.S.C. 112, second paragraph, the Examiner states that in his opinion the phrase "a demolded, mold shaped foamed metal body" as set forth in independent claim 11 and independent claim 18 is indefinite. Applicant respectfully traverses the Examiner's position. As pointed out to the Examiner at the above noted oral hearing, clearly the recitation to "mold shaped foamed metal body" is a structural limitation on the article claim of claim 11 and claim 18. The shaped article which is shaped in a mold has different and recognizable surface characteristics and properties which would not be exhibited by the articles disclosed in cited prior art references 3,834,881, 3,848,666, 3,941,182, 5,482,533 and 6,135,542. The structural differences not only include the nature of the surface of the molded article but also the intricate bond formed between the foamed metal material and the functional structural element. The structural differences are recognizable in the same manner that a cast metal structure can be distinguished from a forged metal structure. Accordingly, the phrase objected to by the Examiner is not a process limitation per se but rather provides further definition as to the structure of the article being claimed. In addition, with specific reference to independent claim 18, the recitation to "form fitted" does in fact add structural limitations to the element. Because the final product is a foamed metal made in a mold the foamed metal as it expands is "form fitted" around the structural element. This

language is clearly a structural limitation which cannot be gleaned from the products of the prior art.

Specific comment needs to be made with regard to the Examiner's application of U.S. Patent 3,848,666. Here the Examiner refers to an intermediate form of a product before demolding. First of all the claims distinguish over this prior art reference by referring to a de-molded-molded, mold shaped foam metal body. In addition, it should be noted that the nature of the intermediate product is transitory and, in accordance with U.S. law, a rejection based on such a transitory article under 35 U.S.C. 102 is not appropriate.

In light of the foregoing, it is submitted that all of the claims as presently pending patentably define over the art of record and an early indication of same is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20431

on January 27, 2003
(Date of Deposit)
Rachel Piscitelli
Name and Reg. No. of Attorney
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Signature
January 27, 2003
Date of Signature

Respectfully submitted,

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11. (Twice Amended) A mold shaped article comprising a de-molded, mold shaped foamed metal body having at least one non-foamable functional structural element [metallurgically] integrally bonded and fixedly embedded in the foamed body.

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